THE DECALOGUE JOURNAL

A PUBLICATION OF THE DECALOGUE SOCIETY OF LAWYERS

Volume 10 OCTOBER, 1959 Number 1

Lawyers' Education

The pursuit of the legal profession involves a happy combination of the intellectual with the practical life. The intellectual tends to breadth of view; the practical to that realization of limitations which are essential to the wise conduct of life. Formerly the lawyer secured breadth of view largely through wide professional experience. Being a general practitioner, he was brought into contact with all phases of contemporary life. His education was not legal only, because his diversified clientage brought him, by the mere practice of his profession, an economic and social education. The relative smallness of the communities tended to make his practice diversified not only in the character of matters dealt with, but also in the character or standing of his clients. For the same lawyer was apt to serve at one time or another both rich and poor, both employer and employee. Furthermore, nearly every lawyer of ability took some part in political life. Our greatest judges, Marshall, Kent, Story, Shaw, had secured this training . . .

The last fifty years have brought a great change in professional life. Industrial development and the consequent growth of cities have led to a high degree of specialization —specialization not only in the nature and class of questions dealt with, but also specialization in the character of clientage. The term "corporation lawyer" is significant in this connection. The growing intensity of professional life tended also to discourage participation in public affairs, and thus the broadening of view which comes from political life was lost . . .

The effect of this contraction of the lawyer's intimate relation to contemporary life was doubly serious, because it came at a time when the rapidity of our economic and social transformation made accurate and broad knowledge of present-day problems essential to the administration of justice.

The judge came to the bench unequipped with the necessary knowledge of economic and social science, and his judgment suffered likewise through lack of equipment in the lawyers who presented the cases to him. For a judge rarely performs his functions adequately unless the case before him is adequately presented. Thus were the blind led by the blind. It is not surprising that under such conditions the laws as administered failed to meet contemporary economic and social demands. . . .

We are powerless to restore the general practitioner and general participation in public life. Intense specialization must continue. But we can correct its distorting effects by broader education—by study undertaken preparatory to practice — and continued by lawyer and judge throughout life; study of economics and sociology and politics which embody the facts and present the problems of today.

JUSTICE LOUIS D. BRANDEIS
from *The Words of Justice Brandeis*
edited by Rabbi Solomon Goldman

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IN THIS ISSUE

Decalogue Auxiliary Organized

More than seventy five women, wives of members of the Decalogue Society, are already enrolled in the newly founded Decalogue Auxiliary. At a meeting on June 4th a membership luncheon was held at Heidelberg Allgauer's restaurant arranged for by Mrs. Bernard Spak. Mrs. Esther O. Kegan, member of our Board of Managers, addressed the gathering on the history, work, and the principles of The Decalogue Society and outlined tentative plans and an agenda for the activities of the Auxiliary. Mrs. Herbert Glieberman was in charge of the musical program.

Mrs. Ira Shapiro was appointed chairman of the By-Laws Committee to formulate a charter for the Auxiliary.

It is already to the credit of the Auxiliary that it had contributed considerably to the social success of The Decalogue annual outing at Chevy Chase on July 16th.

The following are temporary officers of the Auxiliary: Mrs. Harry A. Iseberg, president; Mrs. Meyer Weinberg, 1st vice president and program chairman; Mrs. Ira Shapiro, 2nd vice president & membership chairman; Mrs. Meyer Balin, recording secretary; Mrs. Newton D. Hacker, corresponding secretary; Mrs. Samuel Shkolnik, treasurer; Mrs. Oscar M. Nudelman, publicity chairman.

DECALOGUE-ISRAEL BOND DINNER October 28th.

The Decalogue annual Israel bond dinner will be held the evening of October 28th, at 8 P.M. at the Covenant Club. The feature speaker for the occasion will be announced shortly.

OUR "TOAST TO THE BENCH" on December 17th

The Decalogue Society of Lawyers traditional cocktail party "A Toast to the Bench" will be held on December 17th at 4 P.M. in the Grand Ballroom, Covenant Club. Our Society expects to be host to judges of the Municipal Court, Cook County, and the Federal judiciary.

INAUGURAL ADDRESS OF NEW PRESIDENT

By MEYER WEINBERG

The election and installation ceremonies inducting into office Meyer Weinberg, the new president of The Decalogue Society of Lawyers, were marked by a large attendance of members, their families, and friends. Representatives of Bench and Bar dwelled upon the eminent fitness of Weinberg and the newly elected officers and members of the Board for their respective posts.

The affair was held at a dinner on June 10th in the quarters of the Chicago Bar Association. Judge Harry G. Hershenson of the Circuit Court was the installing officer.

The retiring president, Alec E. Weinrob, made his parting stewardship report and was the recipient of a handsome gift from the Society as a token of its appreciation for his efforts in behalf of our bar association.

Past president Oscar M. Nudelman made the presentation of a plaque to Miss Matilda Fenberg, the recipient of the Society's inter organization honors for 1958.

Other officers installed were L. Louis Karton, First Vice-President, Bernard E. Epton, Second Vice-President, Judge Irving Landesman, Financial Secretary, Harry H. Malkin, Treasurer, Michael Levin, Executive Secretary.

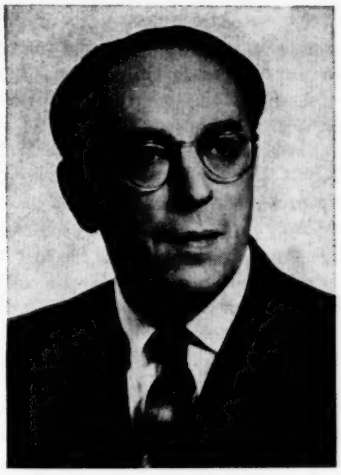
Mr. Weinberg's address follows:

The year 1959 is the silver anniversary of The Decalogue Society of Lawyers. It has earned a silver crown for it's 25 years of service to the profession and community. This day, I too, have a silver anniversary, having been admitted to the Illinois bar 25 years ago.

The roads of The Decalogue Society and your new president tonight converge—and may I say as did the Lord in the play, "Green Pastures"—"I ain't very much, but I is all I got." This all I pledge to give to The Decalogue Society. I accept in concert with my fellow elect officers and the entire Board of Managers, the mandate of the presidency and all its inherent demands.

All persons, even though on the exacting economic treadmill of modern times, should seek some unselfish goal or cause, to justify their existence. This is as it should be, for, throughout the Torah by which so many of us try to live, expresses this doctrine fully. The Decalogue Society of Lawyers has given me a great cause. For the meaning of my responsibilities I am particularly grateful to past president Harry Iseberg, and my class-mate and law teacher, Harry G. Fins.

The Decalogue Society is fundamentally a bar association, and it well measures up to a definition of



MEYER WEINBERG

such, which I read so recently on the front page of our own Decalogue Journal, which is so well edited by our man of letters, Benjamin Weintroub:

> . . . Bar associations are trustees of the faith the public must be permitted to place in any member of the profession. The responsibility of the association is that of a fiduciary. To see that faith is never breached and to apply corrective measures whenever it is. But more than that, a bar association, by virtue of the very fact that it organized a large, literate and learned segment of society, can provide leadership in many other fields . . .

The Decalogue Society of Lawyers is a vital and robust organization. It is the third largest bar association in the state of Illinois. Its 1500 members include a number of lawyers throughout many states, in Canada, and elsewhere. It is true that our constitution requires that our members be of Jewish faith—but our horizon of interests is as endless as the call of human service. We manifest strong and steadfast interest in Jewish problems, and likewise in all other problems relevant to the common good.

Thus, The Decalogue Society has always been in accord with the Chicago Bar Association, the Illinois State Bar Association, and with the various ethnic bar groups, such as the Justinian Society, Catholic Lawyers Guild, Lutheran Bar Association, and others. Great numbers of our members participate in the work of the Chicago Bar Association and Illinois State Bar Association; and, if you will permit a personal reference, for years I have been editor of the Family Law Bulletin of the Illinois State Bar Record. I hereby promise Mr. Jerome J. Weiss, president of the Chicago Bar Association, sitting but

a few feet from me, that The Decalogue Society of Lawyers shall continue to be active in all the worthwhile projects of our respective bar associations.

We have to note that in this, Jules Verne age of unreality—the age of the atom—wherein all thinking people are gravely concerned with the future, that it is easy for any society to lose its regard for basic personal rights; that the doctrine of expediency has crept into American life as a standard of behavior. This, too, has tended to weaken public interest in our own Bill of Rights. Our job is to be ever vigilant, and so help protect these rights.

Now as to our future plans, I read somewhere that it is always a good policy "to be not the first by whom the new is tried nor the last to lay the old aside." Accordingly, the high traditions and standards set by previous administrations shall be fully respected. Particularly I should like to pay my respects to our out-going president, Alec E. Weinrob, with whom I have worked in close association. I know, from intimate contact with his work, how well he has done.

Our plans will include, subject to the approval of my fellow officers, and the Board of Managers:

1. Continuation, under the leadership of Elmer Gertz of our Legal Education, "Bread and Butter," series of lectures.

2. Intensive study and efforts for the improvement of the law and the legal practices—specifically, we will again lend whatever aid we can in the area of judicial reform. I here prophesize that reform will come in due time and the state of Illinois will yet have the type of judicial article it needs. I am happy to note that the Court Administrator's Bill went to the governor for signature.

3. Public Forum—our organization is evolving a novel plan to make available to our community some contact with many of the presidential candidates for 1960. We would like to learn from their lips the problems that concern the American people at the next presidential election. Saul Epton, L. Louis Karton, and Judge Irving Landesman are in charge of this unique and useful project.

4. Full cooperation with our committee, under the chairmanship of Eugene Bernstein, in the matter of establishing a perpetual fund of $50,000.00 for a chair in the Hebrew University Law School.

5. Most important, continuous efforts for the enrollment of young men of the calibre of Marvin Victor, Favil Berns and Reginald Holzer, for the enlistment under The Decalogue Society banner of like individuals to help in further vigorous growth of our organization. We need more members who have true faith, sound opinions and express them, men responsive to the demands of the times who wish to serve in the noble causes of the legal profession and the vital areas of communal interests.

Meyer Weinberg—Biographical Sketch

Meyer Weinberg was born in Chicago in 1911. He was graduated from the Shepard Public School in 1925, from the Crane Technical High School in 1929, and Crane College in 1931. He was graduated from the De Paul University School of Law in 1934. He was admitted to the Illinois Bar the same year. For several years he was a gymnastic and calisthenic's instructor at the Chicago Sears Roebuck Y.M.C.A.

Weinberg is well known in the legal profession as a writer and lecturer on law. He is the author of ILLINOIS DIVORCE, SEPARATE MAINTENANCE and ANNULMENT, which is a standard text in Illinois. At present he is compiling an up to date Supplement to the above. He is also the author of the 1958 Supplement to the national text known as "Keezer on Marriage and Divorce" (third edition). He is now compiling the fourth edition of that work. He is the editor of the Family Law Bulletin issued by the Illinois State Bar Association. He has written many articles for The Decalogue Journal, Illinois State Bar Journal, and Chicago Bar Record.

He has lectured before The Decalogue Society and appeared on the lecture platform of other legal societies in Cook County and elsewhere.

Weinberg is a member of the Matrimonial Law committee of the Chicago Bar Association, the executive section for family law of the Illinois State Bar Association. He is a member of the American Bar Association, and Law Institute.

He resides with his wife, Mollie, and sons, Richard and Robert, at 6037 N. Christiana Avenue. He is a member of the law firm of Weinberg, Greenburg & Klein.

PRAISE FOR BLUE CROSS AND BLUE SHIELD INSURANCE

"As a member of The Decalogue Society of Lawyers I want to take this opportunity of expressing my appreciation to the Society for having given me the privilege of the use of Blue Cross and Blue Shield Insurance. This protection has helped defray my expenses during my recent illness so that my family was relieved of the burden that usually befalls one where hospital and doctor bills are involved."

Sidney Goldstein
140 North Dearborn Street
Chicago 2, Illinois

GERTZ, MAROVITZ HEAD SHAW SOCIETY PAN-O-DRAMA

Elmer Gertz, president of the Shaw Society of Chicago, named Judge A. L. Marovitz as chairman of Pan-O-Drama (Theatre Festival) which was a feature of the Pan-American Games recently held in Chicago. The three evenings, which featured stars of stage and screen, attracted wide attention.

In connection with the Pan-O-Drama and his other interests, Gertz participated in five radio and television programs; Irv Kupcinet's At Random over CBS-TV; Fran Allison's Show over WGN-TV; Tony Weitzel's over WBBM; Sam Lesner's program over WMAQ; and Marty Faye's Show over ABC-TV.

GREAT BOOKS DISCUSSION GROUP

Oscar M. Nudelman, and Alec E. Weinrob, co-leaders of The Decalogue Great Books Discussion Group announce that the Society's seventh year of thought provoking and informative discussions dealing with great masterpieces of literature will begin on Monday, September 21st at 6:15 P.M. at Society headquarters, 180 W. Washington Street.

Two hours are devoted to each session which are to be held at two week intervals. At the first meeting there will be a discussion of Plato's *Gorgias*. The following classics and the dates on which they will be considered are:

October 5th—Aristotle: *ON THE SOUL*
October 19th—*BHAGAVAD-GITA*
November 2nd—Boethius: *CONSOLATION OF PHILOSOPHY*
November 16th—Maimonides: *GUIDE TO THE PERPLEXED*
November 30th—Donne: *HOLY SONNETS*
December 14th—Moliere: *TARTUFFE*: *THE MISANTHROPE*

As always, there are no educational or formal prerequisites for attendance. Lack of previous participation in the discussions is no hindrance for enrollment and all members and their friends are cordially invited. There is no charge whatsoever for participation to a member or to his friends for attendance of this course. Ladies are welcome.

This is a unique and an unusual opportunity for one who has long felt that his readings of classics have been neglected. There is no better way to understand any aspect of the teachings of mankind's giants of thought than by sharing the experience with others, at an intimate discussion level, at any lecture gathering.

The reading material (selections from the great works) can be obtained by contacting Messrs. Oscar M. Nudelman at FR 2-1266, or Alec E. Weinrob at FR 2-7266.

LAWYERS' COUNSELING SERVICE

The Decalogue Society of Lawyers continues its Lawyers' Counseling Service initiated last year, to members anxious to obtain answers to legal questions from specialists in their respective fields. Inquiry of David Davidson, 38 So. Dearborn Street, State 2-7553, chairman of The Lawyers' Counseling Service committee, or of Louis J. Nurenberg, 8 So. Dearborn Street, Financial 6-3573, co-chairman, will elicit the names of specialist members who have volunteered their abilities in aid of members who, on occasion, have special need for counsel and advice on legal problems.

Plan Trip To The Supreme Court Of The United States

Members interested in obtaining a certificate to practice before the Supreme Court of the United States may avail themselves of this privilege by joining a pilgrimage to Washington, D. C. on November 9th. The Decalogue group will leave O'Hare Field by plane on Sunday November 8th at 5:20 P.M. It is expected that a number of members will be accompanied by their families.

Chairman of this expedition, Meyer C. Balin suggests that the following requirements be complied with prior to a member's appearance before the Court:

Obtain Application form—from The Decalogue Society office, 180 West Washington Street, and complete the form (except for the names of the two sponsors).

Obtain Certificate from the Supreme Court of your state. In Illinois write to Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court, Springfield, Illinois, enclosing check for $1.00.

Forward the Application form and Illinois Supreme Court certificate to MEYER C. BALIN, 200 S. MICHIGAN AVENUE, CHICAGO 4, ILLINOIS.

For detailed information pertaining to hotel reservations, rates, and other information please telephone Meyer C. Balin, HA 7-6400. Stanley Stoller is co-chairman of this project.

Appointment Book and Directory

The Decalogue 1960 Appointment Book and Directory, an indispensable aid for a busy law office is expected to be ready for distribution to The Decalogue membership on or about December 1st, 1959. Favil David Berns, chairman of the Appointment Book and Directory committee, announces that no effort will be spared to make the next edition of the Diary the finest in the history of our Society. New features to increase its usefulness will be added. Its color will be rich brown with gold lettering.

It is anticipated that in spite of the extra cost involved the new Diary will be mailed to each member rather than follow the former practice of distributing it individually through various Loop office buildings.

The cost of the Appointment Book and Diary is defrayed by advertisements. Mr. Berns urges each member to help him with this project by obtaining an advertisement or advising him where same is available. Suggestions for improvement of the Diary are heartily welcome. Please phone Mr. Berns at FInancial 6-1076.

Illinois 1959 Legislation Affecting the Practice of Law

By HARRY G. FINS

Member of our Board of Managers Harry G. Fins, lecturer and writer, is the author of several books on Illinois and Federal practice and procedure, including ILLINOIS MOTION AND PETITION PRACTICE, ILLINOIS ADMINISTRATIVE PROCEDURE, FEDERAL PRACTICE GUIDE, and FEDERAL APPELLATE PRACTICE. His reports on Illinois legislation affecting the practice of law appear in The Decalogue Journal at the expiration of the biennial sessions of the Illinois General Assembly.

Mr. Fins was a lecturer in The John Marshall Law School and at Lawyers Post-Graduate Clinics.

I

JUDICIAL SYSTEM

Judicial Article Defeated

The proposed Judicial Article Amendment of 1957 was defeated at the polls on November 4, 1958. An election contest followed. On May 21, 1959, the Statement of Contest was dismissed by the Circuit Court of Lake County and an appeal therefrom is now pending in the Supreme Court of Illinois under Docket No. 35431.

Court Administrator

House Bill 318 created the office of Court Administrator. His duties will, generally, consist of collecting statistics and other data pertaining to the courts of record, preparing and submitting budget estimates and recommending to the Supreme Court the assignment of judges to courts in need of assistance.

Assigned Judges

House Bill 1350 provides that city, village, municipal, county, and probate judges who serve by assignment of the Supreme Court in another court of record for which the annual salary exceeds that of the assigned judge, shall receive the salary fixed for the court to which they are assigned for the period served there, and shall also receive allowances for travel expenses. Since judicial salaries in Cook County are the highest in the State, this fact should be an inducement to downstate judges to serve in Cook County, where there is now a general shortage of judges.

J.P. System

After April 1961, Justices of the Peace and Police Magistrates will no longer hold fee offices and will be paid salaries between $600 and $12,000 per year. Justices of the Peace will be elected from justice districts (instead of from townships, as they are now) and their number is restricted. The salaries of Justices of the Peace will be fixed by the respective County Boards and paid by the counties. Police Magistrates will continue to be elected from cities and villages and their salaries will be fixed and paid by the respective municipalities.

J.P. No Collection Agency

Justices of the Peace may no longer act as collection agencies. House Bill 1364, effective July 22, 1959, provides: "A justice of the peace shall not engage directly or indirectly in any activities relating to collection of debts, judgments or any other kind of obligation."

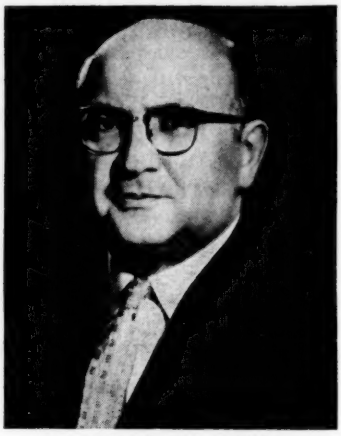
II

APPEALS

Probate Appeals

By virtue of House Bill 534, appeals in probate, beginning with September 1, 1959, will fall into the following categories:

1. In a proceeding for the sale of real estate by an executor, administrator, guardian or conservator, the appeal is to be taken from the Probate Court to the Appellate or Supreme Court as in other civil cases in courts of record.
2. In a proceeding admitting or refusing to admit a domestic or foreign will to probate, the appeal is to be taken from the Probate Court to the Appellate or Supreme Court as in other civil cases in courts of record.
3. In a proceeding involving an amount in controversy of $3000 or more, the appeal is to be taken from the Probate Court to the Appellate or Supreme Court as in other civil cases in courts of record.
4. Criminal contempt cases arising in the Probate Court are considered misdemeanors and are reviewable by the Appellate and Supreme Courts by writ of error.
5. All other proceedings are reviewed by appeal from the Probate Court to the Circuit Court.



HARRY G. FINS

Appeal from the Appellate to the Supreme Court

Heretofore, the law was that in actions ex contractu (exclusive of actions involving a penalty) and in all cases sounding in damages, in order to petition for leave to appeal from the Appellate to the Supreme Court, the amount involved, exclusive of costs, had to be $1500 or more, which amount was jurisdictional. House Bill 1326 abolished the requirement of any jurisdictional amount for a petition for leave to appeal from the Appellate to the Supreme Court.

Appeal in Criminal Case

Heretofore, criminal convictions were reviewable by the Appellate and Supreme Courts by writ of error. House Bill

1325 provides that, effective January 1, 1960, a defendant may prosecute an appeal in lieu of a writ of error. This is not new in Illinois. It is, in effect, a codification of Rule 28 of the Supreme Court and Rule 12 of the Appellate Courts. There are a number of criminal cases in Illinois which were reviewed by appeal instead of by writ of error. For example, see *People* v. *Cowdrey*, 360 Ill. 633 (1935); *People* v. *Downer*, 322 Ill. App. 130 (1944); *People* v. *Clark*, 9 Ill. (2) 400 (1956); *People* v. *Capoldi*, 10 Ill. (2) 261 (1957); *People* v. *Lewis*, 13 Ill. App. (2) 253 (1957); *People* v. *Perlman*, 15 Ill. App. (2) 239 (1957); *People* v. *Spencer*, 20 Ill. App. (2) 306 (1959).

III

TORTS

Exculpatory Clauses

In *Jackson* v. *First National Bank*, 415 Ill. 453 (1953), the Supreme Court of Illinois held valid an exculpatory clause in a lease involving business property. In *O'Callaghan* v. *Waller & Beckwith*, 15 Ill.(2) 423 (January 22, 1959), the Supreme Court of Illinois held valid an exculpatory clause in a lease involving residential property. House Bill 129 declares exculpatory clauses for negligence of the lessor void as against public policy. The statute, however, excepts from its provisions "business leases in which any municipal corporation, governmental unit, or corporations regulated by a State or Federal Commission or agency is lessor or lessee."

Municipal Immunity

On May 22, 1959, the Supreme Court of Illinois decided the case of *Molitor* v. *Kaneland Community Unit District*, Docket No. 35249, reversing a number of previous decisions and holding that, on a common law basis, municipal corporations do not have immunity from tort liability. As a consequence of the *Molitor* case, the following five bills were enacted:

1. House Bill 1605 gave tort immunity to the Chicago Park District.
2. Senate Bill 1006 gave tort immunity to park districts organized under the Park District Code.
3. House Bill 1638 gave tort immunity to counties.
4. House Bill 1640 gave tort immunity to forest preserve districts.
5. House Bill 1615 deals with public school districts and private schools operated by religious, charitable or eleemosynary institutions. It created a tort recovery limitation on personal injury or property damage of $10,000 or insurance coverage—whichever is greater. Actions must be commenced within one year, with notice of suit within 6 months. There is no mention in the bill of death actions. It may, therefore, be contended that the limitation in the bill does not apply to death actions.

Dram Shop Act

House Bill 847 repealed the Dram Shop Act provision under which real estate could be subjected to payment of a judgment against a lessee, although the lessor was not a party to the action, and under which statute a hidden lien was possible. See *Gibbons* v. *Cannaven*, 393 Ill. 376 (1946).

Libel, Slander and Right of Privacy

House Bill 1495 enacted the Uniform Single Publication Act providing that there shall be but one cause of action for libel, slander or invasion of privacy founded on any single publication, exhibition or utterance, and that a judgment on the merits in any jurisdiction shall bar any other action founded on the same publication, exhibition or utterance.

Right of Privacy—Limitation

House Bill 1138 provides a one-year statute of limitations for the commencement of an action for publication of matter violating the right of privacy.

IV

DOMESTIC RELATIONS

Removal of Children

Beginning with *Miner* v. *Miner*, 11 Ill. 43 (1849), and followed by a long line of cases, Illinois has adopted the doctrine that a court should not permit the removal of a minor beyond the jurisdiction of the State. *Schmidt* v. *Schmidt*, 346 Ill. App. 436 (1952) broke away from the rigidity of the *Miner* doctrine and allowed a 10-year old boy to establish his home with his mother in New York. The *Schmidt* case was followed in *Wolfrum* v. *Wolfrum*, 5 Ill. App.(2) 471 (1955). House Bills 310 and 311 authorize the court, in divorce and separate maintenance actions, to permit a party who has custody of a child to take the child beyond the State of Illinois upon giving reasonable security guaranteeing the child's return.

Wage Assignments

House Bills 1061 and 1139 authorize the court to require wage assignments to secure child support in actions for divorce and separate maintenance.

Mentally Retarded Children

In *Department of Public Welfare* v. *Haas*, 15 Ill. (2) 204 (1958), the Supreme Court of Illinois held that imposing charges upon the parents of mentally retarded children who are in the Lincoln State School did not violate the State's constitutional obligation to provide a "system of free schools, whereby all children of this state may receive a good common school education." The Illinois Legislature disagreed with the Supreme Court and exempted from payment the parents of mentally retarded children, whose ages are between six and seventeen.

V

CIVIL PROCEDURE

Lie Detection Tests Prohibited

The Civil Practice Act was amended by adding Section 54.1 thereto. It prohibits courts in civil trials or pretrial proceeding from requiring a party to submit to a polygraphic detection deception test, or requiring, suggesting or requesting a party to submit to questioning under the effect of sodium pentothal or to any other test or questioning by means of a mechanical device or chemical substance.

Physician-patient Privilege

The Evidence and Depositions Act was amended by adding Section 5.1 thereto. It provides that no physician or surgeon shall be permitted to disclose any information acquired in attending a patient in a professional capacity, necessary to enable him to serve the patient professionally, except in the following seven instances to which this privilege is not applicable:

1. In trials for homicide when the disclosure relates directly to the fact or immediate circumstances of the homicide.
2. In all mental illness inquiries.
3. In actions, civil or criminal, against the physician for malpractice.

4. With the expressed consent of the patient, or in case of his death or disability, of his personal representative, or other person authorized to sue for personal injury, or of the beneficiary of an insurance policy on his life, health, or physical condition.

5. In all civil suits brought by or against the patient, his personal representative, a beneficiary under a policy of insurance, or the executor or administrator of his estate wherein the patient's physical or mental condition is an issue.

6. Upon an issue as to the validity of a document as a will of the patient, or

7. In any criminal action where the charge is either murder by abortion, attempted abortion, or abortion.

Physician's Lien

Senate Bill 1001 creates a lien in favor of physicians against claims and causes of action of the patient for the amount of the physician's reasonable charges to the date of payment of the damages, but not in excess of one-third of the amount paid or due to the patient. It establishes a method of asserting the lien by notice. It preserves the priority of the attorney's lien.

Referees

House Bill 813 provides for the appointment by the Circuit, Superior and City Courts of referees in law actions by agreement of the parties. A referee must be a licensed attorney and his findings of fact are prima facie evidence. The referee is required to file a report and is granted reasonable compensation and travel expenses as allowed by the court.

Garnishment

By House Bill 1284 a new and comprehensive Garnishment Act was passed. It deals with the procedure for affidavits, demands, summons, conditional judgments, exemptions, deductions, set offs, and the enforcement of judgment against the garnishee. It makes many changes in the Illinois law of garnishment.

Adoption

Senate Bill 737 enacts a completely new Adoption Act which will go into effect on January 1, 1960. It contains the following features:

1. Six months residence is required for the petitioners,

2. A minor may adopt by leave of court on good cause shown,

3. An adult may be adopted under certain circumstances,

4. No consent or surrender shall be taken until the passage of seventy two hours from the birth of a child sought to be adopted,

5. Surrenders or consents executed outside Illinois are valid if in accordance with the law of the place where executed,

6. Provision is made for an interim order, followed after six months by a decree of adoption after notice, and

7. Provision is made for different procedures for adoption of a "related child."

Nomination of Administrator

House Bill 18 provides that non-residents domiciled in the United States may nominate an administrator in accordance with preferences applicable to residents. This bill will become effective on December 4, 1961, and will have the effect of depriving the public administrator of participation in such estates.

VI

CRIMINAL LAW

Double Jeopardy

Alfonse Bartkus robbed a federally insured bank in Cicero. He was tried in the United States District Court for the Northern District of Illinois and was acquitted. He was then indicted for the same robbery in the Criminal Court of Cook County. His plea of double jeopardy was denied. He was found guilty and sentenced from 25 years to life imprisonment. His conviction was affirmed by the Supreme Court of Illinois, *People* v. *Bartkus*, 7 Ill.(2) 138 (1955), and in a 5 to 4 opinion, by the Supreme Court of the United States, *Bartkus* v. *Illinois*, 359 U.S. 121 (1959). House Bill 1149 provides that it shall be a sufficient defense for an accused on trial for the violation of an Illinois criminal law to show that he has been tried and convicted or acquitted under a Federal law for an offense based on the act or omission for which he is being tried in Illinois.

Extradition of Witnesses

Witnesses in grand jury proceedings and in criminal trials may be extradited from and to Illinois. Senate Bill 682 enacts the Uniform Law to secure the Attendance of Witnesses from Within or Without a State in Criminal Proceedings. This statute was enacted by 42 States and the Commonwealth of Puerto Rico and its constitutionality was sustained by the Supreme Court of the United States on March 2, 1959, in *New York* v. *O'Neil*, 359 U.S. 1.

Coroner's Inquest

House Bill 1209 provides that a witness at a coroner's inquest has the right to be represented by counsel.

Lie Detection Tests Prohibited

House Bill 301 prohibits the court in a criminal trial from requiring, requesting or suggesting that the defendant submit to a polygraphic detection test, to questioning under sodium pentothal, or to any test or questioning by means of a mechanical device or chemical substance.

Petty Larceny $300

House Bill 1588 provides that the amount for petty larceny be raised from a value of $50 to a value of $300.

Dismissal of Information

House Bill 315 extends to criminal informations the requirement of prosecution or dismissal within four months of incarceration, making the law as to informations the same as it is with regard to indictments.

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MARSHALL KORSHAK

Member, state senator Marshall Korshak addressed the City Club Forum at a luncheon on July 13th on "Impressions of the Legislative Session of the 71st Illinois General Assembly."

ARCHBISHOP BERNARD J. SHEIL

The Decalogue Society is in receipt of a note of appreciation from Archbishop Bernard J. Sheil, whom it congratulated upon his elevation to that rank.

Archbishop Sheil was the recipient of our Society's award of merit for the year 1947.

CONGRATULATIONS

Perry M. Berke, son of master in chancery Samuel Berke, was installed on June 17th as the first president of Heritage Lodge, B'nai B'rith, in Skokie, Illinois.

Member Ben Nudelman, assistant corporation counsel, officiated at the installation ceremonies.

VERSE

"The true poem is the poet's mind . . ." Emerson

HE MUST BE A JUDGE

He does not fall
For alcohol
Or gamble at the races.
The gaming room
Is not his doom,
No deficit he faces.
To beauty shows
He never goes,
He doubtless thinks them common.
He does not laugh
At salty chaff.
His name is Tutenkhamen.

By permission of Judge Frank G. Swain
from *Judicial Jingles*

ADMIRALTY JURISDICTION

By ZEAMORE A. ADER

Member of our Board of Managers Zeamore A. Ader is a former special assistant to the Attorney General of the United States. An Article of his "Civil Rights of Conscience" appeared in The Decalogue Journal, Volume 6, No. 2, and was distributed by the U. S. Department of Justice to all hearing officers in conscientious objector matters.

The general body of admiralty jurisdiction, like the rivers and seas with which it deals, is readily known and generally charted. But the exact shoreline of admiralty jurisdiction, like those rivers and seas, is ofttimes variable, receding and advancing with the tides of doubtful cases.[1]

The keel and main mast of admiralty jurisdiction are the United States Constitution and the Judiciary Act of 1789. The Constitution provides that the "judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish" . . . and "judicial power shall extend to all cases of admiralty and maritime jurisdiction."[2] The judiciary Act of 1789 provides that "the district courts . . . shall also have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction . . . saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it; . . ."[3]

Justice Storey, in the important case of Delovio v Boit,[4] wrote that admiralty jurisdiction, "comprehends all maritime contracts, torts and injuries. The latter branch is necessarily bounded by locality; the former extends over all contracts (wheresoever they may be made or executed, or whatsoever may be the form of the stipulations) which relate to the navigation, business or commerce of the sea."

ZEAMORE A. ADER

Elemental Concepts

Admiralty jurisprudence involves a distinct body of law.[4a] At the threshold, we are met with elementary admiralty terms. The complaint or declaration as known to common law litigation is called a libel. The party who institutes the action is either libellant *in rem*, where the libel is brought against the vessel thereby taken "into the custody of the court," or libellant *in personam*, where the libel is brought against a named person. The defendant is called claimant in the *in rem* proceedings, for he claims return of the vessel in his defense, or he is called respondent to the *in personam* libel.[5]

Where the admiralty proceedings are *in rem*, the ship is appropriated "to the indemnification of the other party," and cognizance of the action is exclusively for the admiralty side of federal courts. *In personam* proceedings involve a choice of forum. There, a libel may be brought on the admiralty side of federal courts, or proceedings may be brought on the common law side of federal courts to enforce common law remedies, "given diversity of citizenship and requisite jurisdictional amount,"[6] or for such relief as may be provided by statute. *In personam* proceedings may be brought in state courts where state courts afford a competent remedy.[7] In such actions, state courts have authority to issue auxiliary attachment against the vessel.[8]

There is jurisdiction over disputes between nationals of other countries concerning events occurring outside of United States territorial waters, where the parties or the *res* is before the court, but the court may, in its discretion, deny jurisdiction for convenience or prompted by special circumstance.[9]

Federal cases in admiralty are heard on a distinct side of United States District Courts and regulated by Admiralty Rules and traditions of procedure.[10]

Admiralty law is an outgrowth of the civil law and like other trials in the civil law are usually tried by the court without a jury.[11] By statute, however, jury trials are provided in maritime litigation arising in the Great Lakes and connecting rivers.[12] Criminal proceedings are as at common law by jury.[13]

This study will be divided into (1) waters, (2) craft, (3) contracts, and (4) torts.

Waters Subject to the Jurisdiction

Admiralty extends to waters which are navigable in fact and form an avenue of commerce between the States and foreign nations.[14] Originally, this was construed to mean the high seas and those rivers within the ebb and flow of the tide, following the English rule.[15] As America's great inland lakes and rivers were discovered and employed, the need to equalize the advantages of admiralty law for inland waters and the need for uniformity of jurisprudence in maritime activities wherever occurring in the nation became recognized. By judicial fiat, admiralty jurisdiction was extended to include all navigable waters between the States and foreign nations.[16] Later, Congress enacted the Statute of 1845,[17] providing that District Courts of the United States shall have admiralty jurisdiction in contract and tort over vessels of 20 tons burden upon the Great Lakes and navigable waters connecting the lakes in commerce and navigation between different states and territories, with like remedies, process and modes of proceedings, and with maritime law constituting the rule of decisions, as on the high seas and tide waters. This statute reserved the right of jury trial to either side and saved concurrent remedies at common law, where the common law is competent to give it, and also saved state concurrent remedies.

This statute was eventually made superfluous, except as to the unusual right of jury trial in admiralty proceedings, by a decision of the United States Supreme Court.[18] The

court there held that admiralty jurisdiction over navigable waters flowed from the United States Constitution,[19] itself, implemented by Section 9 of the Judiciary Act,[20] and that former decisions limiting admiralty jurisdiction to the high seas and tide waters were in error. Thus, inland navigable waters are included,[21] even artificial canals wholly within one state,[22] whether or not the vessel is in the business of commerce or trade between the States or foreign nations, so long as the navigable water involved is an avenue for commerce between the States or foreign countries, either by itself or in connection with other waters.[23]

Craft Subject to the Jurisdiction

Generally, admiralty pertains to vessels and their cargo.[24] The terms, ships and vessels, are used in a very broad sense. By statute, vessels have been defined to include "every description of water craft or other artificial contrivance used or capable of being used as a means of transportation on water."[25] It need not contain means of propulsion. A scow, barge, floating circus, canal boat and raft have been held to be vessels, they being water craft used or capable of being used as a means of transportation on water.[26] But a wharf boat with permanent connections to water and electrical systems on land was not a vessel.[27] A sea plane, while incidentally traveling on water to ascend and alight, was practically incapable of being used as a means of transportation on water and therefore not a vessel.[28]

Admiralty Contracts

In English law, except for seamen's wages and bottomry bonds, not under seal, a contract must have been one made on the sea and to be performed on the sea to come within admiralty jurisdiction.[29] This is not the American rule.[30] Whether or not a contract is maritime depends on the subject matter, not on the place where made.[31] An agreement to build a ship is not within admiralty, because, until launched, it does not acquire the status of a vessel.[32] The repair of a boat already used and intended to be used for transportation is a maritime subject,[33] as are contracts for the carriage of passengers by water notwithstanding that an incidental portion of the agreement was for transportation on land.[34] So are contracts of affreightment and charter parties,[35] charter parties being arrangements for the rental or use of boats, and classified as bareboat, time and voyage charters.[36] Also included are contracts for pilotage,[37] towage,[38] wharfage,[39] lockage,[40] bottomry and respondentia,[41] supplies and repairs to vessels,[42] seamen's contracts,[43] general average bonds,[44] and salvage contracts.[45]

But agreements preliminary to maritime contracts such as arrangements to procure freight are not within the admiralty jurisdiction,[46] nor are those arising out of but collateral to maritime contracts.[47]

Torts Subject to the Jurisdiction

Classically, admiralty jurisdiction over maritime torts depended upon locality. That the origin of the wrong occurred on navigable waters was not sufficient.[48] The wrong must also have been consummated there. Thus, where a fire was negligently caused aboard a ship moored at a wharf in the Chicago River and the fire was communicated to packing houses on the dock, the wrong was not consummated on navigable waters, the damages having occurred on land, and there was no admiralty jurisdiction for the tort.[49]

The rule has now been changed by statute which provides that, "The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to personal property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land. . . ."[50]

Extensions of Admiralty Jurisdiction by Statute

Legislation has added new sails to the ship of admiralty law which now permit voyages in areas that were previously not juristically navigable. The Jones Act[51] affords a remedy for personal injuries suffered by seamen, in Federal Courts *in personam* on the admiralty side without a jury,[52] in Federal Courts on the common law side regardless of diversity of citizenship with trial by jury,[53] or in the state court with trial by jury.[54] There is also a Federal High Seas Death Act,[55] and a Longshoremens and Harbor Workers Compensation Act.[56] There is a Ship Mortgage Act[57] whereby foreclosure proceedings are exclusively in admiralty jurisdiction.

Footnotes

1. "Difficulties attend every attempt to define the exact limits of admiralty jurisdiction, but it cannot be made to depend upon the power of Congress to regulate commerce." Mr. Justice Clifford in The Belfast, 7 Wall 624, 640, 19 L.Ed. 266.
2. Art. III, Sections 1 & 2.
3. 1 U. S. Stat. 76-77, now amended 28 U.S.C.A. Sec. 1333.
4. 7 Fed. Cas. 418 at 444.

4a. Kermarec v Compagnie Generale Transatlantique, 358 U. S. 625, 3 L.Ed. 2d 550, 79 S.Ct. 406.

5. Gilmore and Black, "The Law of Admiralty," (1957) PP. 30-32.
6. Ibid. P. 33.
7. Leon v Galceran, 78 U. S. 185, 20 L.Ed. 74, 27 S.Ct. 778.
8. Rounds v Cloverport Foundry & Machine Co., 237 U. S. 303, 59 L.Ed. 966, 35 S.Ct. 596.
9. The Belgenland, 114 U. S. 355, 12 S.Ct. 1085, 29 L.Ed. 152; Mason v Blaireau, 1 U. S. 479, 2 L.Ed. 266.
10. Title 28 U.S.C.A. following Sec. 723.
11. Connors v Brown S.S. Co., 117 F. Supp. 179.
12. 5 U. S. Stat. 726, now amended, 62 U. S. Stat. 953, 28 U.S.C.A. Sec. 1873, and see Connors v Brown S. S. Co. 117 F. Supp. 179.
13. Benedict on Admiralty (6th Ed.) Sec. 224.
14. The Propeller Genesee Chief v Fitzhugh, 12 How. 443, 13 L.Ed. 1058.
15. The Thomas Jefferson 10 Wheat. 172, 6 L.Ed. 426.
16. Ibid. note 4 and see Wilburn Boat Company v Fireman's Fund, 348 U. S. 310, 99 L.Ed. 337, 75 S.Ct. 368.
17. Statute of 1845, 5 U. S. Stat. 726.
18. Ibid. note 14.
19. United States Constitution, Art. III, Sec. 1 & 2; Romero v International Terminal Co., 358 U. S. 354, 79 S.Ct. 468, 3 L.Ed. 2nd 368.
20. I U. S. Stat. 76-77, now amended, 63 U. S. Stat. 101, 28 U.S.C.A. Sec. 1333.
21. The Hine, 4 Wall. 555, 18 L.Ed. 451.
22. Ex Parte Boyer, 109 U. S. 629, 27 L.Ed. 1056.
23. Ibid. note 22. See The Montello, 87 U. S. 430, and the relation of the Ordinance of 1787 to navigable waters of the Great Lakes area.
24. Gilmore and Black, the Law of Admiralty. (1957) P. 29.
25. 61 U.S. Stat. 633, 1 U.S.C.A. Sec. 3. The United States Shipping Act defines "vessel" "at whatever stage of construction, whether on the stocks or launched." 40 U.S. Stat. 900, 46 U.S.C.A. Sec. 801; see post, Admiralty Contracts.
26. Charles Barnes Co. v One Dredgeboat, 169 F. 895.
27. Evansville & Bowling Green Packet Co. v Chero-Cola Bottling Co., 271 U. S. 19, 70 L.Ed. 805, 46 S.Ct. 379.
28. Noakes v Imperial Airways, Ltd., 29 F. Supp. 412; See note, 13 A.L.R. 2d 345.
29. Insurance Company v Dunham, 11 Wall. 1, 20 L.Ed. 90.
30. Ibid; note 29.
31. Ibid; note 29.
32. New Bedford Dry Dock Co. v Purdy, 258 U. S. 96, 66 L.Ed. 482, 42 S.Ct. 243.
33. North Pacific Steamship Co. v Hall Bros. Marine Ry. & Ship Building Co., 249 U. S. 119, 63 L.Ed. 510, 39 S.Ct. 221.
34. The Moses Taylor, 4 Wall. 411, 18 L.Ed. 397.
35. New Jersey Steam Navigation Co. v Merchants Bank, 6 How. 722, 12 L.Ed. 465.
36. Benedict on Admiralty, (6th Ed.) Sec. 96; Robinson on Admiralty, Ch. 12.
37. In the Matter of Alexander McNiel, 13 Wall. 236, 20 L.Ed. 624.
38. Knapp Stout & Co. v McCaffrey, 177 U. S. 638, 44 L.Ed. 921, 20 S.Ct. 824, with discussion of common law remedy; Boutin v Rudd, 82 F. 685.
39. Ex Parte Easton, 95 U. S. 68, 24 L.Ed. 373.
40. Monongahela Nav. Co. v Steam Tug "Bob Connell," 2 F. 218.
41. The Grapeshot, 9 Wall. 129, 19 L.Ed. 651.
42. The General Smith, 4 Wheat. 438, 4 L.Ed. 609.
43. Sheppard v Taylor, 5 Pet. 675, 8 L.Ed. 269.
44. Bark San Fernando v Jackson, 12 F. 341.
45. The Louisa Jane, Fed. Cases No. 8,532 (D. Mass).
46. The Harvey and Henry, 86 F. 656.
47. Mulvaney v Dalzell Towing Co., 90 F. Supp. 251.

(*Continued on Page* 18)

Legal Education Series To Stress Practical Problems

Because it is generally believed that last year's series of Legal Education lectures was outstanding in substance as well as in attendance, it is hoped that the new series, which starts on September 25, will go even beyond last year's success in every respect. Elmer Gertz is again chairman of the Legal Education Committee, and Matilda Fenberg is co-chairman. They are now in the process of lining up additional speakers and subjects and will shortly issue a brochure giving full particulars.

The first lecture will be by Harry G. Fins on September 25, at 12 noon, at the Covenant Club. Unlike the others in the series this lecture will be preceded by a luncheon and will be held on a Friday. Professor Fins will discuss the legislation enacted at the last session of the General Assembly, which is of particular interest to the practising attorney. For many years now he has delivered a similar lecture following each session of the General Assembly and his talks have become a Decalogue institution.

The series will then revert to the usual Wednesday after-lunch sessions from 1 to 2 P.M. at the offices of the Decalogue Society, commencing on either Wednesday, September 30 or Wednesday, October 7, as will be announced later. While the full list of speakers and subjects cannot be stated at this time, nor the order of appearance, the following are among the scheduled talks:

Zeamore A. Ader—Finality of decision for appeal in Federal Courts

Samuel Berke—The Development of an oil deal

Philip N. Hyman—The Fundamentals of handling the administrative aspects of an income tax case

Marvin Juron and *Howard Minn*—What every lawyer's wife should know

Milton M. Hermann—Some sense and nonsense in estate planning

Everett Lewy—School District law

Henry Perlman—Traffic law enforcement

Meyer Weinberg—New aspects of matrimonial law

Elmer Gertz — Libel and Slander — its present-day aspects

E. Anne Mazur—The trial of a workman's compensation claim

Bernard H. Raskin—Defences in mechanic's lien foreclosure actions

Albert I. Kegan—The new Illinois Drug, Device and Cosmetic Act and hazardous household substances generally

Michael Gesas—The newest in bankruptcy law

Herman B. Goldstein—The incontestable clause in insurance policies

Esther O. Kegan—Trademarks—their selection and protection

Morton Schaeffer—A great idea! Can it be protected?

John M. Weiner—Preference and other points to remember under the Immigration and Nationality Law

Richard L. Ritman—What to do about foreign beneficiaries of probate estates

Nat M. Kahn—Recent development in Illinois probate law

The series is also expected to include talks by Louis G. Davidson, Louis Ancel, Harold R. Gordon, Irwin M. Cohen, Oscar M. Nudelman, Leo S. Karlin, Harold A. Liebenson, Eli E. Fink, Harry J. Busch, Ben Schwartz, Samuel C. Bernstein, and others. It is not too late to suggest other speakers and subjects to the chairman. Communicate your suggestions to Mr. Elmer Gertz, Suite 1351, 120 South LaSalle Street, Chicago 3 (RAndolph 6-6116).

It is recommended that members make it a practice to set aside each Wednesday, irrespective of the subject or speaker. Those who attended regularly last year found that some of the best talks were on the most unexpected subjects.

It is hoped that many of the lectures will be subsequently published in our Decalogue Journal.

MICHAEL M. ISENBERG

MICHAEL M. ISENBERG, a charter member of The Decalogue Society of Lawyers, was elected director of the Dade County Bar Association, Dade County Florida, to serve for three years.

He is chairman of the Courts committee, Dade County Bar Association. His committee has recently, for the first time in Florida history, conducted a membership poll, rating incumbent judges on fundamental judicial qualities, made recommendations of salary increases for all courts in Dade County, and screened nominees proposed by the Board of County Commissioners for appointment to the new Metropolitan Court.

ABNER J. MIKVA

Member, state representative 23rd district Abner J. Mikva addressed the City Club Forum on August 10th on "General Welfare in the State of Illinois—The Timid Approach."

THREE PROPOSITIONS

From an address by Justice John M. Harlan of the United States Supreme Court delivered on May 5th, 1959 at the cornerstone-laying ceremonies at Northwestern university. Printed by permission of Justice Harlan.

. . . As an outsider, I naturally cannot presume to speak upon the immediate practical concerns of Northwestern which are, of course, directed towards the training of young men and women who will become proficient and successful lawyers. I do, however, venture to put to you in a summary way three propositions which seem to me should be reckoned with in the planning of the broader aspects of a modern legal education.

The first is how to bring young lawyers to a realization of the importance of cultivating in themselves the priceless habit—I might almost say art—of taking "time out" for reflective thinking. No successful practitioner or busy judge has failed to experience the sense of frustration which sometimes comes from not having time just to sit down and think. The troublesome thing about the matter is that if one simply waits for such opportunities they never come, for there is always something else crowding upon one's time. Such opportunities have to be created by planned resistance against the inappropriate intrusion of other demands. The lawyer who can cultivate in himself the habit of insistence upon "the right to think" will experience satisfaction from our profession which his more compliant brother is bound to miss. And like most habits, this one is come by easier if it is engendered at an early stage of a lawyer's career.

My second proposition relates to the importance of bringing to young lawyers a realization of the meaning of this Country's free political institutions, for in their healthy preservation lies our best hope for continuing security and tranquility. In these uncertain and emotionally-charged times we must be constantly on the alert lest, through irresponsible forebodings or untutored counsels of the moment, the traditional pattern of our institutions be allowed to become eroded or thrown out of balance. Because we live under a system of laws and not of men, the Bar as a whole bears special responsibilities on this score. It is to the Bar, and not merely to those lawyers who happen to be in some branch of governmental service, that the public has the right to look for sound leadership in the preservation of our institutions. And it is upon the law schools we must count for future generations of lawyers worthy of playing their part in that task.

The third thought which I would like to express is that graduates of the Northwestern Law School will be imbued with a desire when they leave its halls to devote some portion of their future professional careers to the public service. Not only has society the right to expect that much from qualified citizens, especially from those who are lawyers, but, if you will forgive a personal note from one who has but recently crossed this bridge, the experience increasingly brings with it rewarding inner satisfactions.

Let me close these brief remarks by quoting something Woodrow Wilson said while he was still at Princeton:

> . . . Not all change is progress, not all growth is the manifestation of life. Let one part of the body outgrow the rest and you have malignant disease, the threat of death. The growth that is a manifestation of life is equable, draws its springs gently out of the old fountains of strength, builds upon old tissue, covets the old airs that have blown upon it time out of mind in the past. Colleges ought surely to be the best nurseries of such life, the best schools of the progress which conserves. Unschooled men have only their habits to remind them of the past, only their desires and their instinctive judgments of what is right to guide them into the future. The college should serve the State as its organ of recollection, its seat of vital memory. It should give to the country men who know the probabilities of failure and success, who can separate the tendencies which are permanent from the tendencies which are of the moment merely, who can distinguish promises from threats, knowing the life men have lived, the hopes they have tested, and the principles they have proved . . .

RESCUE TORAH

Members Herbert Ellis and Herman S. Landfield risked their lives when they rushed the evening of June 15th into their house of worship, the burning synagogue Congregation Sinai of Rogers Park, 6905 Sheridan Road, to bring out the scrolls of the Torah and other religious articles. Both Ellis and Landfield are widely known in this city for their participation in professional and communal activities.

SAMUEL SHKOLNIK

Member of our Board of Managers Samuel Shkolnik is the recipient of a certificate of merit as "Alumnus of the Year," from the University of Illinois College of Pharmacy Alumni Association. Shkolnik has been secretary of the association for more than a quarter of a century.

He is a lecturer in pharmaceutical jurisprudence at the University of Illinois College of Pharmacy.

SORROW

The Decalogue Society of Lawyers announces with deep regret the deaths of the following members:

William Vihon Joseph Honoroff

THE JEWISH LAWYER AND HIS RESPONSIBILITIES

In September 1958, some two months before his death, Judge Harry M. Fisher addressed our Society at a luncheon in the Morrison Hotel held in behalf of an Israel Bond campaign drive. In the course of his remarks, Judge Fisher, a founder of our Society, dwelled upon aspects of its early history and spoke at considerable length on the responsibilities of the Jewish lawyer to his brethren here and overseas. Below is a condensed version of his address.—Editor

* * * * *

The formation of the Decalogue Society of Lawyers was not accomplished without considerable opposition. I don't know whether all of you here present were there, at the beginning. Some very prominent Jewish lawyers opposed it. I have no hesitancy in giving you the names of two gentlemen in particular, General Abel Davis and Judge Henry Horner, who considered it a separatist movement which should not be encouraged. Judge Horner ultimately changed his mind. I don't think that Abel Davis ever did. I was assigned the duty of convincing these gentlemen that the purpose of the proposed organization was not to separate the Jewish lawyers, but to take advantage of their cooperative efforts, especially in two particulars; one, to encourage their contributions to the development of the law of our State, and the other, to get the Jewish lawyers to work in the field of Jewish interests and to act as our emissaries to members of the Jewish community in respect of the needs of the Jews overseas.

In those days I said and I now repeat, that out of the formation and development of the Decalogue Society, I derived a great deal of compensation and, on the other hand, I have suffered considerable disappointment.

In respect of our efforts here as lawyers in this community, vis-a-vis, the general society, and the members of the bar, we have done exceptionally well. It had brought me a great deal of joy, because I was in Chicago in the early part of this century and, before, perhaps, any man here present even thought about becoming a lawyer.

I know what the "East European Jewish lawyer" meant. He brought us no credit. Mostly, he practiced in the police courts, and very rarely had he risen to such stature where it could be said that he was making a contribution to the bar, or, for that matter, to the Jewish community. The Central European Jews had succeeded fairly well. The first Jewish judge, Phillip Stein, was elected at the very beginning of the century, then there were Judge Mack, and Adolph Kraus, a corporation counsel.

Since the organization of this association, although I won't claim, because of this, the progress of the Jewish lawyer in this community, and particularly, those of East European descent, was really astonishing. We not only have many judges who shed credit upon us, but also lawyers of great standing and capacity, who are almost daily making contributions to the development of the law and the growth of the civilization of our State. It may interest you to know that this is true not only of Chicago. The Jewish lawyer has brought to the developing ideals and growth of the law more than any other group those elements of social benefits that began to grow about 1910. Hardly a social measure, whether it be in New York, Pennsylvania, or Illinois existed but that a Jew was at the head of the movement and in some way or other aided materially in its ultimate enactment into our law.

Even beyond that, following the example set by Mr. Brandeis, when he argued the Women's Ten Hour Law before the Supreme Court of the United States, after many courts had declared it unconstitutional, the Jewish lawyer has brought to the courts a change of attitude in the consideration of cases that involve social problems. Before the Brandeis case, any citation of authority other than legal authority, could, on motion, be stricken from briefs. Today, so far as the Supreme Court of the United States is concerned, unless a social problem is involved, it will not hear your case.

Brandeis, in that case, spent six pages on a discussion of the law, and seventy-six pages on the discussion of the social problem involved. In a lesser measure, Jews throughout this country have contributed their genius and their talents in bringing not only social legislation, but a social view in interpreting laws to the courts. It is not by sheer accident that we are grounded in the law. Unfortunately, some of us have uprooted ourselves. I know of no other religion than the Jewish that has made a sacrament of teaching the law not to lawyers.

Knowing the law and the rules of human behavior, is not only a duty to teach your children, but it is a sacrament; it is commanded that the establishing of your religious life, unlike among the Greeks and the Romans, and the knowledge of the law and its study, was enjoined upon the people. There are basic philosophies which I think only the Jew understands, and that is why the average Jewish judge takes to heart that which we read after the *Insonotakiv,* that God is not a vengeful God; that all he asks of the sinner, is to repent; then he will die, and even to

his last day, God waits for his repentance and return.

Consciously or unconsciously, the Jewish lawyers of this country have made that sort of an advancement to human welfare, and Jewish judges, as well, have supported the developing of all the great social measures that have been enacted by the legislature. Those of us who belong to or join this Society of ours, have been made more conscious of the treasures that we have which we can add toward the development of the law of this state.

On the other hand, so far as the participation of the Jewish lawyers in the Jewish field, where they can do so much, where they can become the interpreters to our people of the essence of the American civilization, and where they can make clear to them what it means to be under a government of the people, of which they are an equal part—there they have not done quite so well.

I would like to see every lawyer, every Jewish lawyer, make some little offering, both ways, to the development of the law of the state and to the better understanding by the Jews of the meaning of the sort of the civilization under which we live. Beyond that, who but the lawyer can interpret to our people the movement of the great forces which have been set in motion since 1947? When the State of Israel was established, many apologized for its establishment solely on the theory that it provided a place of refuge for our homeless Jews. Gentlemen, it has gone far beyond that. Look at the position that Israel holds today on the world scene; look what Israel has achieved for us even on the military fronts, in raising our stature, not theirs particularly, before the world.

All of you remember that the only thing our friends would say about the Jews would be, what they saw reflected in pictorial representations; of Jews with long beards, blowing a shofar on Rosh Hashana; a sort of caricature. Whoever saw reproductions of Jews carrying muskets? Of Jewish boys who looked no different than the soldiers of this country, for instance? Those who have considered us cowards are now studying the military genius of Israel. Country after country have given their praise and there are some who say that the Sinai peninsula effort is one of the greatest military achievements in the annals of war. Within four days, the Israelis not only reached their goal, the Suez Canal, but, given one more week, they would have been in Cairo and there would never have been the opening of the door for the Communists to enter into the Near East situation. I can assure you that the responsible members of our government knew all about it. Members of the various governments in the United Nations have turned to the representatives of Israel for advice and counsel in things of greatest moment to the world perspective. Who but lawyers can convey that situation to our own people, at least?

How is it, that just when the world is confronted with all these problems, which if not resolved could result in the very destruction of civilization itself, and of half of the human race, if not more; that Israel should be in the spot where these very forces are in operation, and that Israel should have a share in meeting them? For may it not yet come, that out of Israel will come the law, and out of Jerusalem the word of God, in relationships between nation and nation, as it did between man and man?

I feel that we have not succeeded in making our own people conscious of the tremendous things they are living through from day to day. Aside the religious phase, just taking the facts, the growth of our people as a people in the course of ten years, its influence upon the world scene, the possibility of a resolution of all those great problems which try the souls of men, may find at least a contributing force toward their solution. We have not succeeded nor have the lawyers who are trained to analyze evidence been able to interpret all these forces to our people.

Israel must survive not alone for the Jews, not alone to satisfy our hopes and not alone for the purpose of enlarging our own ego as Jews before the world. It must survive for the sake of the peace of the world, and for its possible contribution to the solution of the many problems which trouble us from day to day. It must be strong to carry out the mandate that all children should study the law, the moral law as well as the ordinary laws of human conduct, so that there will be one little place on the face of the earth peopled by those who know and understand the value of law, whether it be moral or civil, and the value of human relationships and human dignity and self respect.

A people destroyed two thousand years ago, is now sitting at the counsel table of the family of nations, not only as a participant for its own sake, but as a participant in the solution of the world's troubles. I think if you would give thought to it, you would not wait to be called upon to help; you would feel it an affront to you if you were not given the opportunity to do it.

If you can forecast the future by fifty or a hundred years and see what our people and even the non-Jews will think of those of us who had participated in this great world experiment, you will readily understand what it will mean to you, to your children, to your children's children . . . .

BOOK REVIEWS

THE SILENT INVESTIGATORS: The Great Untold Story of the U. S. Postal Inspection Service, by John N. Makris. E. P. Dutton & Co. 319 pp. $4.95.

Reviewed by IRWIN N. COHEN

Member Irwin N. Cohen is Commissioner of Investigation for the City of Chicago. For five years he was in the U. S. Attorney's office, serving as Assistant U. S. Attorney, 1st Assistant, and for a brief period U. S. Attorney by appointment of the U. S. District Judges at Chicago.

Nearly every American schoolboy has heard of J. Edgar Hoover. How many Americans have heard of David H. Stephens? He is Chief Postal Inspector, and heads up the Government's oldest law-enforcement agency, and one which lawyers familiar with Federal criminal practice recognize as unsurpassed in the field of criminal investigations. While some of the inspectors this reviewer has known have wistfully commented on the torrential and glamorous publicity other investigative agencies have achieved, most of them have accepted the disparity with philosophic calm mixed upon occasion with some mild profanity.

The composite postal inspector is not the Hollywood type of handsome, athletic swashbuckler in a belted trench coat, who can and does punch into unconsciousness numerous sinners, and who possesses an irresistible and almost indecent attraction for all young women of varied moral standards. In truth, he is a middle-aged, balding, peaceful, pot-bellied fellow allergic to all athletic pursuits other than hurrying for the suburban train. And yet, woe unto the malefactor whose activities bring the inspectors into action against him! Without fuss or fanfare these superb investigators gather evidence with such thoroughness that even a novice in the United States Attorney's office has little difficulty in obtaining a conviction. According to the author, the conviction rate in postal inspectors' cases has ranged from 97.5 to 99.1 per cent. For the fiscal year 1957 the rate was 98.9 per cent. No breakdown is given as between contested and non-contested cases.

It is not generally known that the inspectors, who now number 950, in addition to handling criminal matters involving the mails, are also highly trained efficiency experts who furnish the technical advice designed to improve the Post Office Department. This Department is the largest single business in the world, with more than 500,000 employees, 85,000 vehicles (some of which figure in accidents which must be investigated by the inspectors), and more than 38,000 post offices. Inspectors visit all post offices at least once a year to insure efficient operation, and accounting of all funds handled. Surveys are constantly being made of the immense postal system. The inspectors constitute an independent force responsible to the Chief Postal Inspector, who, in turn, is answerable only to the Postmaster General of the United States.

This book is of the "officially authorized" type and possesses all the virtues and vices common to that species. The author has had access to many of the case files and to considerable historical data never previously published. This high degree of cooperation has made for a valuable and useful volume. On the other hand, however, the author has become imbued with the notion of the infallibility of the inspectors (a claim I have never heard one of them advance). Thus, when two Little Rock lawyers were tried for having in their possession securities known to have been stolen from the mails,

> . . . while the inspectors produced sufficient evidence to warrant convictions, the lawyers' local connections weren't wasted on the jury which returned a verdict of not guilty.

He finds it necessary to chide some U.S. attorneys for being reluctant to prosecute some mail-fraud cases "in spite of the carefully prepared and air tight cases assembled by the postal inspectors," completely overlooking other factors which legitimately enter into prosecutive determinations. The author's uncritical viewpoint is also apparent when he complains of the necessity of proving the defendant's fraudulent intent in mail-fraud prosecutions.

Despite the overworked "the inspectors always get their man" motif and some sloppy writing, this book is very useful for those interested in learning of the history and accomplishments of an outstanding agency of our government.

1959 Cumulative Supplement to Keezer on the Law of Marriage and Divorce, by Meyer Weinberg. The Bobbs-Merrill Company, 326 pp.

Reviewed by DAVID F. SILVERZWEIG.

Since publication in 1946 of the third edition of their nationally known work, *Keezer on the Law of Marriage and Divorce*, there have been many new developments in this active and vital field of the law. The *1959 Cumulative Supplement* reflects these new developments in approximately 200 newly-created sections, including "Divisible Divorce," "Cool-Off Laws," "Artificial Insemination," and "Custody Affected by Religious Considerations."

The author of this volume, Meyer Weinberg, has brought to this work extensive experience as a writer and lecturer in the field of matrimonial law. Illinois lawyers are familiar with his *Illinois Divorce, Separate Maintenance and Annulment*, an authoritative and scholarly book widely used in this state. The clarity of style, economy of expression, and profes-

sional craftsmanship which characterize the author's Illinois work are amply manifest in this supplement to Keezer's notable text, long recognized as a standard American authority.

This volume contains the many hundreds of cases decided in courts of review since publication of the parent work, and also new statutory enactments in the various states. The jurisdictions covered have been broadened to include the Virgin Islands. A handy index makes the volume useful for ready reference.

The *1959 Cumulative Supplement* is indispensable to lawyers possessing a copy of the original Keezer text. It will also prove eminently useful to those who do not possess the original work but are interested in the latest developments in matrimonial law.

Mr. Weinberg, who is currently serving as President of the Decalogue Society of Lawyers, is now compiling the fourth edition of Keezer's work to be published in 1961.

MORTIMER SINGER, New President Lake County Bar Association

Member Mortimer Singer was installed at a dinner on September 10th, at Glen Flora Country Club, as the new president of Lake County Bar association.

THEY SEEK EMPLOYMENT

Recent law school graduates, members of our Society, seek immediate employment in law offices. Many, prior to their admission to the Bar, acquired considerable experience working as law clerks. If there is an opening in your law office or if you know of one elsewhere, please communicate with Leon Kovin, chairman of The Decalogue Society Placement committee, CEntral 6-5588 or, address your inquiry to The Decalogue offices at 180 West Washington Street, ANdover 3-6493.

CONGRATULATIONS, EUGENE BERNSTEIN

Member of our Board of Managers Eugene Bernstein is the recipient of congratulations from friends in the profession and in this community upon the fortieth anniversary of his practice of law in the state of Illinois. Bernstein, a graduate of Kent College of Law, class of 1919, was admitted to the bar the same year.

Only ten more years to go the golden milestone Eugene, and then . . . more years!

MAX REINSTEIN

Member Max A. Reinstein was elected chancellor of Tau Epsilon Rho national legal fraternity, Chicago graduate chapter.

Reinstein is a former president of the Research Society for Cerebral Palsy.

MOSES WITH THE TABLETS

Artist unknown.

Sculpture done in Southern Germany, eighteenth century. Courtesy The Jewish Museum, New York.

Admiralty Jurisdiction—

(*Continued from Page* 10)

48. Swayne & Hoyt v Barsch, 226 F. 581; compare Atlantic Transport Co. v Imbrovek, 234 U. S. 52, 34 S.Ct. 733, 58 L.Ed. 1208, 51 L.R.A.N.S. 1157.
49. The Plymouth, 3 Wall. 20, 18 L.Ed. 125. Morrison and Strumberg, Cases and Materials in Admiralty.
50. 62 U. S. Stat. 496, 46 U.S.C.A. 740.
51. 41 U. S. Stat. 1007, 46 U.S.C.A. 688, Hanna, Federal Remedies for Employee Injuries, PP. 95 et seq.
52. McAfoos v Canadian Pacific Steamships, 243 F. 2d. 270; O'Brien v U.S. Tank Ship Corporation, 16 F. Supp. 478.
53. Ibid. Note 52.
54. Senko v LaCrosse Dredging Corporation, 352 U. S. 370, 1 L.Ed. 2d, 404, 77 S.Ct. 415.
55. 41 U. S. Stat. 537, 46 U.S.C.A. Sections 761-768; The Vessel M/V Tungees, etc. v Skovgaard, etc., 358 U. S. 588, 3 L.Ed. 2d 524, 79 S.Ct. 503.
56. 44 U. S. Stat. 1424, 33 U.S.C.A. Sections 901-50.
57. 41 U. S. Stat. 1000, 46 U.S.C.A. Sections 911-84.

For a discussion concerning the enforceability of state statutes which impinge on Admiralty matters, see Just v Chambers, 312 U.S. 382, 61 S. Ct. 687, 85 L.Ed. 903.

In some instances, state court jurisdiction in admiralty matters may be divested by United States limitation of liability statute, see Robinson on Admiralty, Ch. 18. For a valuable discussion on admiralty law and related problems of trade, see, "Legal Problems of International Trade," edited by Paul A. Proehl, 1959, University of Illinois Press.

. . . The Constitution does not recognize an absolute and uncontrollable liberty. . . . The liberty safeguarded is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals and welfare of the people. Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable to its subjects and is adopted to the interests of the community is due process. . . .

Justice Charles E. Hughes

Judge's Reference

I venture to believe that it is as important to a judge called upon to pass on a question of constitutional law, to have at least a bowing acquaintance with Acton and Maitland, with *Thucydides*, *Gibbon* and *Carlyle*, with *Homer*, *Dante*, *Shakespeare* and *Milton*, *with Machiavelli*, *Montaigne* and *Rabelais* with *Plato*, *Bacon*, *Hume*, and *Kant*, as with the books which have been specifically written on the subject. For in such matters everything turns upon the spirit in which he approaches the questions before him. The words he must construe are empty vessels into which he can pour nearly anything he will. * * * judges must be aware that there are before them more than verbal problems; more than final solutions cast in generalizations of universal applicability.

Judge Learned Hand in "The Spirit of Liberty" (Knopf).

P. S. More than a "bowing acquaintance" with the above classics may be had by attending The Decalogue Society Great Books discussion meetings.

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President Appoints Society Committee Heads

The hopes of our new President for a productive year are centered in the chairmen of the Society's committees the list of which follows.

Mr. Meyer Weinberg, President, has expressed deep confidence in the integrity and competence of the men and women appointed by him to carry on the Society's activities in the profession and in its relationship to the community at large. "These members," Mr. Weinberg said, "are to supply the leadership that is to perpetuate the ideals of The Decalogue Society of Lawyers." The President stressed the need for the enlistment of the interest of the entire membership in the work of these committees and its participation in the labors ahead.

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